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No. 75-937

# In the Supreme Court of the United States

OCTOBER TERM, 1975

WILLMAR POULTRY COMPANY, PETERSON-BIDDICK COMPANY, and LYNN M. TOMPT, on behalf of themselves and all others similarly situated,

*Petitioners,*

vs.

MORTON-NORWICH PRODUCTS, INC. and RICHARDSON-MERRELL, INC.,

*Respondents.*

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

## RESPONSE OF MORTON-NORWICH PRODUCTS, INC.

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## RESPONSE OF MORTON-NORWICH PRODUCTS, INC.

This response to petitioners' application for a writ of certiorari is filed by respondent* Morton-Norwich Products, Inc. ("Norwich") for the sole purpose of delineating the two separate and distinct issues which were decided by the District Court and the Court of Appeals.

* Inasmuch as the petition for certiorari raises no issue involving the decision in favor of Norwich, Norwich is a respondent only in the formal sense of the term.

The first issue was whether the doctrine of fraudulent concealment, or any other tolling rule, could operate in this case to toll the four-year statute of limitations applicable to alleged violations of the Sherman Act. Because the essential facts upon which petitioners base their claim for relief were matters of public record more than four years prior to the filing of the complaint, the District Court held that there could be no tolling of the statute of limitations on grounds of fraudulent concealment and that there was no other basis for tolling. Predicated on that holding, the District Court granted partial summary judgment in favor of Norwich:

> "Claims based on sales to plaintiffs made before June 7, 1960 are barred. Norwich's motion for partial summary judgment as to all sales before June 7, 1960, will be granted." 1964-2 Trade Cases, para. 71,292 at 97,896. (Pet. App. A-26).

The Court of Appeals agreed with the District Court's rejection of petitioners' fraudulent concealment claim and affirmed the action of the lower court in granting partial summary judgment to Norwich.

There is nothing in the petition for certiorari which questions the propriety of the Court of Appeals' affirmance of the partial summary judgment granted to Norwich.

The second issue decided by the lower courts was whether the motion of respondent Richardson-Merrell, Inc. ("RMI") for complete summary judgment should be granted. That issue involved matters over and above the fraudulent concealment question and the other questions relating to the asserted tolling of the statute of limitations. While Norwich strongly believes that this second issue was correctly decided in favor of RMI by both the

District Court and the Court of Appeals, it is not appropriate for Norwich to discuss that issue in this response.

Respectfully submitted,

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